

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STEPHANIE RODRIGUEZ,) CIVIL NO. 08-00189 SOM-KSC
Individually and as)
Guardian Ad Litem of J.C.) FINDINGS AND
RODRIGUEZ, a minor; SAMUEL) RECOMMENDATION TO GRANT IN
OYOLA-PEREZ; JULIUS) PART AND DENY IN PART
RIGGINS; and NILDA MEYER,) DEFENDANT'S BILL OF COSTS
Individually and as)
Personal Representative of)
the Estate of Wilfredo)
Dayandante,)
)
Plaintiffs,)
)
vs.)
)
)
GENERAL DYNAMICS ARMAMENT)
AND TECHNICAL PRODUCTS,)
INC.,)
)
Defendant.)
)

FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY
IN PART DEFENDANT'S BILL OF COSTS

On December 14, 2010, Defendant General Dynamics Armament and Technical Products, Inc. ("Defendant") filed a Bill of Costs ("BOC"). On December 28, 2010, Plaintiffs untimely filed an Objection to the BOC. On December 30, 2010, Defendant

filed a Response to the Objection.¹ The Court finds this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice of the U.S. District Court for the District of Hawaii ("Local Rules").

As an initial matter, the Court will address the timeliness of the Objection. Pursuant to Local Rule 54.2(d), any objection to the BOC had to be filed within 7 days after service of the BOC. Rule 54.2(d) provides:

Within seven (7) days after a Bill of Costs is served, the party against whom costs are claimed must file and serve any specific objections, succinctly setting forth the grounds and authorities for each objection. Upon the timely filing of any objections, the clerk will refer both the Bill of Costs and objections to the court for a determination of taxable costs. If no such memorandum is filed within the required time, the movant shall notify the clerk that no objections have been filed. When no timely objection has been filed, the clerk may tax all of the requested

¹ Defendant was not entitled to file a response to the Objection. Local Rule 54.2 contemplates the filing of an objection, not any further response from the party seeking costs.

costs on fourteen (14) days' notice.

Local Rule 54.2(d) (emphases added). According to Local Rule 54.2(d), Plaintiffs were required to file their Objection by December 21, 2010. Even with the extra time provided for taking action as set forth in Federal Rule of Civil Procedure ("FRCP") 6(d), Plaintiffs' Objection was due on December 27, 2010. Fed. R. Civ. P. 6(d) (adding 3 days to the time period in which a party may or must act if service is made under rule 5(b)(2)(C), (D), (E), or (F)); see also id. 6(a)(1)(C) ("[I]nclude the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday."). Consequently, the December 28, 2010 filing is untimely.

Nevertheless, even without considering Plaintiffs' Objection, the Court finds that the requested costs are subject to reductions. As such, the Court shall now evaluate the BOC.

Defendant requests \$68,837.91 in costs -

\$1,891.00 for service of summons and subpoena; \$43,088.83 for printed or electronically recorded transcripts necessarily obtained for use in the case; \$3,107.56 for witnesses; and \$20,750.52 for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.

FRCP 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs-other than attorney's fees-should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). The Local Rules provide that "[t]he party entitled to costs shall be the prevailing party in whose favor judgment is entered, or shall be the party who prevails in connection with a motion listed in LR54.2(b)." Local Rule 54.2(a).

Courts have discretion to award costs pursuant to Rule 54(d). See Yasui v. Maui Electric Co., Ltd., 78 F. Supp. 2d 1124, 1126 (D. Haw. 1999). The burden is on the losing party to demonstrate why costs should not be awarded. Stanley v. Univ. of Southern

California, 178 F.3d 1069, 1079 (9th Cir. 1999).

Here, Defendant is the prevailing party in this action, having obtained a favorable verdict and judgment having been entered in its favor on November 30, 2010. The Court will therefore tax statutorily permitted costs in Defendant's favor.

While courts have discretion to award costs pursuant to FRCP 54(d), courts may only tax the costs specified in 28 U.S.C. § 1920. See Yasui, 78 F. Supp. 2d at 1126 (citing Alflex Corp. v. Underwriters Laboratories, Inc., 914 F.2d 175, 177 (9th Cir. 1990); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987)). Section 1920 enumerates the following costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of the title;
- (6) Compensation of court appointed

experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920; Yasui, 78 F. Supp. 2d at 1126. The Court addresses each of the costs requested by Defendant in turn.

A. Service of Process

Defendant requests \$1,891.00 for the service of deposition subpoenas. Section 1920(1) allows for the taxation of the fees of the marshal. See also Local Rule 54.2(f)(1) ("Fees for the service of process and service of subpoenas by someone other than the marshal are allowable, to the extent they are reasonably required and actually incurred."). Defendant submitted invoices to support its request. Because the cost of serving subpoenas is compensable and Defendant has provided proper documentation to the Court, the Court finds that **\$1,891.00** is taxable.

B. Transcript Costs

Defendant requests \$43,088.83 for transcript costs - \$24,451.04 for deposition transcripts and

\$18,637.79 in daily trial transcripts. Section 1920(2) provides for the taxation of the "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." 28 U.S.C. § 1920(2). Local Rule 54.2(f)(2) provides:

The cost of a stenographic and/or video original and one copy of any deposition transcript necessarily obtained for use in the case is allowable. A deposition need not be introduced in evidence or used at trial, so long as, at the time it was taken it could reasonably be expected that the deposition was used for trial preparation, rather than mere discovery.

Local Rule 54.2(f)(2).

1. Deposition Transcripts

Based on a careful review of Defendant's exhibits and the record in this case, it appears that with the exception of the deposition transcripts for Elias Barrientes, Christopher Kennison, Randall Meyer, Jonathan Riggins, and Julius Riggins, Sr., the requested costs are permissible. Defendant has not established that the depositions for the foregoing individuals were reasonably expected to be used for trial preparation, rather than mere discovery. Evanow

v. M/V Neptune, 163 F.3d 1108, 1118 (9th Cir. 1998) (deposition transcript costs are taxable if they are reasonably necessary for trial). Defendant's unsupported and conclusory explanation that the depositions were needed to assist in trial cross examination is insufficient. Accordingly, the Court recommends that the district court tax deposition transcript costs pursuant to § 1920(2) and Local Rule 54.2(f) in the amount of **\$21,936.29**.

2. Trial Transcripts

With respect to the \$18,637.79 in daily trial transcripts, the Court finds that Defendant's request is excessive and non-compensable. The costs associated with trial transcripts may, in certain circumstances, be taxable. However, Defendant has failed to demonstrate why it was necessary to order 19 trial transcripts. Defense counsel represents that the "daily trial transcripts assisted in presenting accurate final argument, and the cross examination of later witnesses." Decl. of Edmund Burke ("Burke Decl.") at ¶ 4. While the transcripts may certainly

have been of value to the defense in preparing for trial, Defendant has not explained why nearly \$20,000.00 in trial transcripts was necessary, as opposed to counsel's notes and recollections. It is one thing to incur costs that a client has agreed to bear and/or that assist in litigating a case, and another to seek reimbursement for the excessive costs from the opposing party. Insofar as the Court is unable to ascertain which, if any, trial transcripts were necessarily obtained for use in the case, the Court declines to tax the daily transcript costs.

C. Witness Fees

Defendant seeks reimbursement of witness Phillip Leong's attendance and airfare in the amount of \$3,107.56 - \$695.00 for 5 days attendance and \$2,412.56 in airfare. Witness fees are taxable pursuant to § 1920(3). Local Rule 54.2(f)(3) further specifies that "[p]er diem, subsistence, and mileage payments for witnesses are allowable to the extent reasonably necessary and provided for by 28 U.S.C. § 1821." Local Rule 54.2(f)(3); see also Clausen v. M/V New Carissa,

339 F.3d 1049, 1064 (9th Cir. 2003) (stating that witness fees are taxable costs under § 1920(3), but are limited to forty dollars per day under 28 U.S.C. § 1821(b)). Section 1821(b) limits witness fees to \$40.00/day. Because the fee requested for Mr. Leong's attendance well-exceeds the allowable \$40.00/day rate, the Court must reduce the attendance cost to \$200.00 (\$40.00 x 5 days).

With respect to travel expenses, § 1821(c)(1) provides:

A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

28 U.S.C. § 1821(c)(1). Defendant submitted an invoice documenting that it incurred \$2,412.56 for Mr. Leong's economy roundtrip airfare from New Jersey. The Court is satisfied that Defendant has met the requirements

set forth in § 1821(c)(1) and accordingly taxes \$2,412.56 in airfare and \$200.00 in attendance costs, for a total of **\$2,612.56.**

D. Copying Costs

Finally, Defendant requests reimbursement for copying costs totaling \$20,750.52. Section 1920(4) explicitly provides for the taxation of copying costs and section 1920(3) provides for the taxation of "[f]ees and disbursements for printing." 28 U.S.C. § 1920(3) & (4). Local Rule 54.2(f)(4) sets forth specific requirements that must be met.

The cost of copies necessarily obtained for use in the case is taxable provided the party seeking recovery submits an affidavit describing the documents copied, the number of pages copied, the cost per page, and the use of or intended purpose for the items copied. The practice of this court is to allow taxation of copies at \$.15 per page or the actual cost charged by commercial copiers, provided such charges are reasonable. The cost of copies obtained for the use and/or convenience of the party seeking recovery and its counsel is not allowable.

Local Rule 54.2(f)(4) (emphases added). In support of its request for copying costs, Defendant submitted an

invoice from Professional Image. Defense counsel explains that "the copying charges were reasonable and . . . necessitated by requirements of the court for the court's copies, a copy for Plaintiffs' counsel, and a copy for Defendant." This explanation is inadequate and fails to comply with Local Rule 54.2(f)(4). Mr. Burke's declaration neither describes the documents copied, nor explains the use of or intended purpose for the items copied. Without this information, the Court cannot determine whether the copies were necessary and/or reasonable. The fact that the copies were purportedly necessary to provide courtesy copies to the Court and Plaintiffs' counsel does not alone justify the significant expense. Moreover, Defendant is not permitted to seek recovery of the cost of copies made for its use, which, based on Mr. Burke's representation, it is clearly doing here.² For these reasons, the Court declines to tax copying/outside

² Thus, even if the Court had taxed the copying costs, the amount would at minimum be reduced by one-third.

printing costs.

E. Total Taxable Costs

In sum, the Court finds that \$1,891.00 in service costs, \$21,936.29 in deposition transcript costs, and \$2,612.56 in witness fees are taxable. The Court therefore recommends that the district court tax **\$26,439.85** in costs.

CONCLUSION

In accordance with the foregoing, this Court FINDS and RECOMMENDS that Defendant's Bill of Costs, filed December 14, 2010, be GRANTED IN PART and DENIED IN PART. The Court recommends that the district court award Defendant **\$26,439.85** in costs.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, January 5, 2011.





Kevin S.C. Chang
United States Magistrate Judge

CV 08-00189 SOM-KSC; Rodriguez, et al. v. General Dynamics; FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART DEFENDANT'S BILL OF COSTS